

ELECTION WITH TRAVERSE

The Examiner has restricted the claims of the invention into two groups:

(i) Group I directed to claims 1-8, drawn to an automatic pill cutting device, classified in Class 225, subclass 103; and

(ii) Group II directed to claims 9-13, drawn to an apparatus for cutting pills, and according to the Examiner classified in Class 206, subclass 534.

According to the Examiner, Groups I and II are distinct from each other as being related to subcombinations which do not overlap in scope, are not obvious variants, and are separately usable. According to the Examiner, the claims of Group I have separate utility as they can be used without the indexing wheel having a plate with a plurality of receiving location and the cutting blade that moves in a plane perpendicular to the plate as required in Group II. Also, according to the Examiner, the claims of Group II have separate utility as they can be used without the torsion fingers at the cutting location which help to center the pills before cutting, and the rotating indexing wheel that brings the pills to a cutting location as required in Group I.

The applicant elects to prosecute Group II with traverse. The applicant respectfully traverses the Examiner's restriction requirement and requests reconsideration of the same for the following reasons. First, while the claims of Group I are properly classified in Class 225, subclass 103 ("Severing by Tearing or Breaking", "Breaking or Tearing Apparatus", "Movable Breaking Tool") as determined by the Examiner, **the claims of Group II are not properly classified in Class 206, subclass 103.** Class 206,

subclass 103 is directed to “Special Receptacle or Package”, “For Ampules, Capsule, Pellets or Granules”, “With indicia or indicator”, whereas claim 9 is directed to an apparatus for cutting pills (i.e., a severing or breaking apparatus) using a moving cutting blade (i.e., a movable breaking tool). Indeed, claim 9 sets forth: **“An apparatus for cutting pills, comprising: a cutting blade; and an indexing wheel assembly arranged below the cutting blade, said indexing wheel assembly including a plate having a plurality of pill receiving locations and an indexing means for causing the plate to repeatedly rotate and stop said pill receiving locations in a position under said cutting blade, wherein said cutting blade moves in a plane perpendicular to said plate in order to cut pills located in said pill receiving locations and stopped under said cutting blade”** (emphasis added). Thus, claim 9 is properly classified in Class 225, subclass 103 with claims 1-8 as it is a breaking (cutting) apparatus with a movable breaking tool. Claim 9 does not claim in any manner a receptacle or package which would place it in Class 206. In addition, the claimed indexing wheel assembly including an indexing means is not an “indicator” but rather, as set forth in the claim is a “means for causing the plate to repeatedly rotate and stop said pill receiving locations in a position under said cutting blade”; it is an “indexor”. Thus, the word “indexing” in claim 9 has a different meaning than the word “indicator” or “indicia” which relates to subclass 103.

Second, while claims 1 and 9 may have separate utility, the groups of claims clearly overlap, as claim 13 (which is dependent on claim 9) includes the torsion fingers for centering the pill, and claim 9 does require the indexing wheel assembly which has a

rotating plate, while claim 7 (which is dependent on claim 1) includes means for causing the blade to move up and down to cut the pills.

Given that both groups of claims are classified in the same class/subclass, and given that the groups of claims overlap, reconsideration and withdrawal of the restriction requirement is earnestly requested.

Upon election of Group I or Group II, the Examiner has also required election of subgroups. With respect to Group II, the Examiner has stated that claim 10 drawn to an apparatus for cutting pills including an indexing means having a Geneva wheel is classified in Class 30, subclass 278, while claims 11-13 drawn to an apparatus for cutting pills including a plurality of cutting grooves each flanged by angled centering walls is classified in class 30, subclass 134. According to the Examiner, the inventions of Group IIA and IIB are related as subcombinations which do not overlap in scope, are not obvious variants, and are separately usable.

The applicant elects with traverse to prosecute claims 11-13 in conjunction with claim 9. In addition, new claim 14 which is dependent on claim 11 should be added to this subgroup. The applicant respectfully traverses this election requirement on the grounds that the claims are properly classified in Class 225, subclass 103 as indicated by the Examiner with respect to claim 9, and not in Class 30 subclass 278 for claim 10 and Class 30 subclass 134 for claims 11-13. More particularly, Class 30 is entitled "Cutlery". Class 30, subclass 278 is directed to "Cutting Tools" "With material receiving opening".

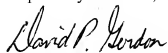
It is not understood how the Examiner has found the inclusion of a Geneva wheel to relate to a “material receiving opening”. Reconsideration is earnestly requested with respect to that subclassification. Similarly, subclass 134 is directed to “Combined Cutlery or Combined with Ancillary Feature” “With material-holder or disposal” “Shears” “Grip Type”. However, class 30, subclass 134 does not contain the type of invention presently claimed. Indeed, the following search of the PTO records yielded 0 patents: (CCL/30/134 AND ABST/((pill OR tablet) OR capsule)). Thus, reconsideration is earnestly requested with respect to that subclassification.

It is noted that the election requirement with respect to claims 3, 6, 7, and 8 as being drawn to different subclasses in class 30 is likewise flawed and reconsideration is requested for that as well.

In light of all of the above, reconsideration of the Election requirement between Group I and Group II is earnestly requested, as is reconsideration of the additional restrictions among Group II (and Group I). Thus, examination on the merits of claims 1-14 is requested. If for some reasons, the Examiner wishes to maintain a restriction

requirement, the Examiner is invited to call the undersigned attorney of record so that the necessity for a petition and the resultant delay can be avoided.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David P. Gordon". The signature is fluid and cursive, with the first name "David" being the most prominent.

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Jan. 28, 2008